S.B. CRIMINAL APPEAL NO.590/2005
(Jaspal Singh Vs. State of Raj.)

Date of order :: 11.09.2006

HON'BLE MR. JUSTICE KRISHAN KUMAR ACHARYA

Mr.G.M.Khan, for the appellant.
Mr.S.N.Tinwari, PP for the State.

This appeal has been filed against the order dated 27.5.2005 passed by Special Judge NDPS Cases, Sri Ganganagar whereby the truck of the appellant bearing No.PB 02 A 9387 was ordered to be confiscated.

It is submitted by learned counsel for the appellant that the said truck was seized in FIR Case No.32/95, Police Station, Karanpur and the present appellant, being the registered owner of the truck in question, was subsequently arrested and charge-sheet was filed against him before the Court of Special Judge, Sri Ganganagar. Learned Special Judge, vide order dated 14.12.2001 convicted and sentenced the accused-Jaspal Singh for the offence under Section 9/25 A read with Section 29 of the NDPS Act. Against the said order, appellant preferred an appeal before this Court. This Court acquitted this accused vide his judgment dated 6.2.2002 passed in S.B.Criminal Appeal No.01/2002. In that case, this Court has held that accused Jaspal Singh was simply registered owner

of the said truck and he had no knowledge that his truck was being used for the transport of narcotic material. It has also been submitted that previously, on 20.6.2004 also, the learned Special Court passed the order of confiscation of the said truck which was challenged by filing appeal before the learned Sessions Judge, Sri Ganganagar and appellate court while setting aside the order of confiscation dated 20.6.2001, remanded the case to the trial court by his his order dated 19.3.2005 for deciding the matter afresh after giving opportunity of hearing to the appellant-Jaspal Singh. Thereafter, notice was issued to him and reply was filed by Jasptal Singh. Learned trial court after hearing parties and taking the help of Section 35 of the NDPS Act has rejected the application of the appellant and by the impugned order dated 27.5.2005, confiscated the truck bearing No.PB 02 A 9387.

Learned counsel for the appellant argues that appellant has been acquitted by this Court in criminal case and Court has already held that accused had no knowledge that truck was being used for the transport of contraband material. Learned court below has not considered the matter in true perspective and also ignored the judgment passed by this Court in S.B.Criminal Appeal No.01/2002 on 6.2.2002. It is further contended that no opportunity of leading the evidence has been given to the appellant. Learned

trial court has passed the order of confiscation with the help of Section 35 of the NDPS Act. He states that the order passed by learned Special Judge is illegal and bad in eye of law, therefore, same may be quashed and set aside.

Learned Public Prosecution argues that learned Special Judge after considering the material on record and taking the help of Section 35 of the NDPS Act has rightly passed the order of confiscation. It was the duty of the accused to prove that he had no knowledge that his truck was being used for the transport of narcotic substances. But appellant has not lead any evidence, therefore, the order impugned does not require any interference by this Court.

I have considered the rival arguments advanced by learned counsel for the parties and also gone through the order impugned as well as record of the case. This Court has already acquitted the appellant Jaspal Singh in criminal case holding inter alia that he had no knowledge that his truck was being used for transport of narcotic material. It appears that learned Special Judge has not considered the matter in true perspective nor any opportunity was given to the appellant to lead evidence nor he conducted any inqury. Learned trial court only issued notice to the appellant and after receiving the

reply, has disposed of the matter. In this regard, I would like to draw the attention of Special judge towards the provisions of Section 60 Sub-clause (3) and also the provisions of Section 63 of the NDPS Act, which read as under:-

> "60. Liability of illicit drugs, substances, plants articles and conveyances to confiscation.-
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> 1.....
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> 2.....
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> 3. Any animal or conveyance used in carrying any narcotic drug or psychotropic substance [or controlled substance], or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscations, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, it any and the persons-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use."

> "63. Procedure in making confiscations.- (1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the Court shall decide whether any article or thing seized under this Act is liable to confiscation under section 60 or section 61 or section 62 and, if it decides that the article is so liable, it may order confiscation accordingly.
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> (2) Where any article or thing seized under this Act appears to be liable to confiscation under Section 60 or section 61 or section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the Court may inquire into and decide such liability and may order confiscation accordingly.
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> Provided that no order of

> confiscation of an article or thing shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim:
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> Provided further that if any such article or thing other than a narcotic drug,psychotropic substance [or controlled substance] the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the Court is of opinion that it sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this sub-section shall as nearly as may be practicable, apply to the net proceeds of the sale."

A combined reading of both the provisions clearly indicates that any conveyance in which contraband substances were being carried or transported, can be confiscated, unless the owner of the animal or conveyance proves that it was used without the knowledge or connivance of the owner himself, his agent, it any and the persons-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use. The procedure for confiscation has been given in Section 63. The first proviso clearly provides that no order of confiscation for an article or thing shall be made until the expiry of one month from the date of seizure, or without hearing any person who made claim any right thereto and the evidence, if any, which he produces in respect of his claim. The combined reading of this Section shows that inquiry is required in this regard. It appears that learned

trial court has not enquired the matter properly. He has not given any opportunity to the appellant to lead evidence to rebut the presumption of Section 35 also. Looking to all the facts and circumstances of the case, since no procedure has been adopted as envisaged under Section 60 and 63 of the NDPS Act, therefore, the order dated 27.5.2005 deserves to be set aside.

In this view of the matter, the order dated 27.5.2005 passed by learned Special Judge, NDPS Case, Sri Ganganagar in Criminal Misc. Case No. 31/2005 is set aside and the matter is remanded to the learned trial court to decide the matter afresh after conducting inquiry into the matter and giving opportunity to the appellant-Jaspal Singh to produce evidence in this regard and also take into consideration the judgment dated 6.2.2002 passed by this Court in S.B.Criminal Appeal No.01/2002 by which appellant Jaspal Singh has been acquitted. He shall pass appropriate order as per provisions envisaged in Section 60 and 63 of the NDPS Act as far as possible within a period of one month from the date of the receipt of this order.

Accordingly, this criminal appeal is disposed of at admission stage.

Appellant-Jaspal Singh is directed to produce all the evidence available with him before the trial court on the date fixed by Special Judge.

(KRISHAN KUMAR ACHARYA), J.

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